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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1962

No. 304

G. R. ABERNATHY, ET AL., Petitioners,

versus

CITY OF IRVINE, ET AL., Respondents.

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF KENTUCKY.

BEN H. SCOTT,
Irvine, Kentucky,
MART V. MAINOUS,
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WESTERFIELD-BONTE CO., INCORPORATED, LOUISVILLE, KY.

TABLE OF CASES, TEXTBOOKS AND STATUTES CITED IN TEXT.

The cases herein discussed are the same as those discussed by the petitioners and discussed in the opinion of the Court of Appeals of the Commonwealth of Kentucky.

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G. R. ABERNATHY, ET AL., - - *Petitioners,*

v.

CITY OF IRVINE, ET AL., - - - *Respondents.*

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF KENTUCKY.

To the Honorable: The Chief Justice and the Associate Justices of the Supreme Court of the United States:

The Respondents request that the petition for a writ of certiorari to the Court of Appeals of Kentucky be denied. We respectfully submit that the petition should be denied for reasons as follows:

The lease contract provides that the lessee is to continuously operate the hospital; at reasonable rates; to keep it repaired; to maintain insurance against loss or injury by fire and storm and in default of any of said provisions the city of Irvine and Estill County have the right to terminate the lease. The contract is not copied in full in the petition herein, and we request the Court to carefully read same. It appears to be the view of the petitioners that public funds are committed to the operation of this hospital. There is no basis for this conclusion, because public funds are not com-

mitted to the operation of this hospital, and there is no such provision in the lease contract.

Apparently it is the view of the petitioners that a municipality has no power to dispose of its property. As pointed out in the opinion of the Court of Appeals of the Commonwealth of Kentucky a municipality does have such power, and it necessarily follows that if a municipality can dispose of its property it certainly can lease its property.

The record establishes that Estill County and the city of Irvine are unable to operate this hospital, the total population of Estill County inclusive of the city of Irvine as determined by the 1960 Census being 12,466. The people of this county are very happy over the operation of the hospital except an intolerant handful of ministers and laymen.

The administrators of the Hill-Burton Act approved of the lease in issue.

CONCLUSION.

For the reasons aforesaid, the respondents respectfully submit that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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